

**ALABAMA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of: \_\_\_\_\_

Alabama Army National Guard  
Ft. McClellan Automated Gas Station  
UST Facility ID No. 23438-015-019475  
Ft. McClellan, Calhoun County, Alabama

**PROPOSED**

**ADMINISTRATIVE ORDER**

No. \_\_\_\_\_

**PREAMBLE**

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.); the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.); and the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code r.") promulgated pursuant thereto, the Alabama Department of Environmental Management (hereinafter the "Department" or "ADEM") makes the following FINDINGS:

**STIPULATIONS**

1. The Alabama Army National Guard is the registered Owner of a regulated underground storage tank (hereinafter "UST") facility located at Ft. McClellan Automated Gas Station, 1167 Freemont Road, Ft. McClellan, Calhoun County, Alabama, designated as ADEM Facility I.D. Number 23438-015-019475.
2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.).
3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rpl.Vol.), ADEM is the State Environmental Control Agency for the purposes of federal environmental law, including 42 U.S.C. §§ 6991 to 6991(m), as amended.
4. ADEM is authorized to administer and enforce the provisions of the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.).

5. Based upon an inspection of the UST facility on February 4, 2010 and/or a review of facility records, the Department has documented the violations alleged herein.

6. Pursuant to ADEM Admin. Code r. 335-6-15-.05(2), all new underground storage tank (UST) systems must be registered with the Alabama Department of Environmental Management within thirty days of bringing the system into use.

7. The Owner has failed to register a new UST system with the Alabama Department of Environmental Management within thirty days, in violation of ADEM Admin. Code r. 335-6-15-.05(2).

### **CONTENTIONS**

Pursuant to § 22-22A-5(18)(c), Ala. Code (2006 Rpl. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall be a separate violation.

In arriving at the civil penalty assessed in this matter, the Department has considered the following:

A. Seriousness of the Violation:

The Owner/Operator failed to register a new UST system with the Department. The violation impedes the Department's regulatory authority over USTs for threats to public health, safety and the environment.

B. Standard of Care:

The Owner/Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. Economic Benefit Which Delayed Compliance May Have Conferred:

The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Owner/Operator.

D. Efforts to Minimize or Mitigate the Effects of the Violation Upon the Environment:

There are no known environmental effects as a result of the alleged violations.

E. History of Previous Violations:

The Owner/Operator does not have a history of previous violations.

F. Ability to Pay:

The Owner/Operator has not alleged an inability to pay the civil penalty.

- G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$1,000.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UST facilities, as follows (see attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Failure to register USTs	\$100 - \$25,000

**ORDER**

Based on the foregoing FINDINGS and pursuant to §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(12) and 22-22A-5(18), Ala. Code (2006 Rpl.Vol.), it is hereby ORDERED:

A. That, within forty-five days of the issuance of this Administrative Order, the Owners shall pay to the Department a civil penalty in the amount of One Thousand Dollars for the violations cited herein. Failure to pay the civil penalty within forty-five days of the issuance of this Administrative Order shall constitute cause for the Department to file a civil action in the Circuit Court of Montgomery County, Alabama.

Payment shall be made by Cashier's Check or Money Order, payable to the Alabama Department of Environmental Management, and addressed as follows:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

B. That the Owners shall otherwise comply with all applicable requirements for each UST and shall continuously remain in compliance therewith each and every day thereafter until such time the UST is permanently removed from service pursuant to ADEM Admin. Code r. 335-6-15-.34.

C. That, should any provisions of this Administrative Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law, and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

D. That, except as otherwise set forth herein, this Administrative Order is not and shall not be interpreted to be a permit or modification of a permit under Federal, State or local law, and shall not be construed to waive or relieve the Owners of the obligation to comply in the future with all applicable law.

E. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Owners of the violations cited herein.

F. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Owners for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

---

John P. Hagood  
Director

# ATTACHMENT A

## Penalty Calculation Worksheet

AL National Guard  
P.O. Box 5280  
Ft McClellan, AL 36205

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
ADEM Admin Code r. 335-6-15-.05(2) states that any owner who brings a UST system into use after April 5, 1989, must within 30 days of that date, a notice of the existence of such tank system to ADEM.	1	\$1,000	\$0	\$0
<b>Totals:</b>	1	\$1,000	\$0	\$0

Economic Benefit\*: \$0  
Mitigating Factors\*: \$0  
Ability to Pay\*: \$0  
Other Factors\*: \$0

**Total Civil Penalty: \$1,000**

### Footnotes

\* See the "Findings" of the Order for a detailed description of each violation and the penalty factors